

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIACase No: **C07-02952 WHA**Case Name: **DEL MAR SEAFOODS INC v. BARRY COHEN, ET AL.,****EXHIBIT and WITNESS LIST**

JUDGE: WILLIAM H. ALSUP			PLAINTIFF ATTORNEY: Max Kelly; Gregory Poulos			DEFENSE ATTORNEY: Gwendolyn Fanger; James Walsh		
TRIAL DATE: May 20, 22-23, 2008			REPORTER(S): Kathy Wyatt; Joan Columbini			CLERK: Dawn Toland		
PLF NO.	DEF NO	DATE OFFERED	ID	REC	DESCRIPTION	MAY 20, 2008	BY	
		<u>7:28 am</u>			<u>Bench Trial Began</u>			
					<u>Preliminary Matters Addressed: Plaintiff's oral motion for pro hac vice of Jodie Taligferro is granted. Plaintiff will have Joe Roggio, Controller of Del Mar present and defendant Barry Cohen will be present during the trial. Defendant gave the Court courtesy copies of trial briefs 1) Federal Ship Mortgage Act; 2) atty/client privilege; 3) Mr. Cohen's claims for travel expenses.</u>			
		<u>7:38 am</u>			<u>Plaintiff's Opening Statement</u>			
		<u>8:00 am</u>			<u>Defendants Opening Statement</u>			
		<u>8:21 am</u>			<u>Plt's witness Joseph Roggio sworn-in</u>			
<u>7</u>			<u>x</u>	<u>x</u>	<u>Promissory Note</u>			
<u>8</u>			<u>x</u>	<u>x</u>	<u>First Preferred Mortgage</u>			
<u>37</u>			<u>x</u>		<u>Schedule of Payments</u>			
<u>38</u>			<u>x</u>		<u>Schedule of Payments</u>			
<u>22</u>			<u>x</u>	<u>x</u>	<u>Accounts Payable Trial Balance</u>			
<u>23</u>			<u>x</u>	<u>x</u>	<u>Accounts receivable Trial Balance</u>			
<u>24</u>			<u>x</u>	<u>x</u>	<u>Olde Port Fisheries Inventory Records</u>			
<u>18</u>			<u>x</u>	<u>x</u>	<u>Accounts Payable Trial Balance</u>			
<u>25</u>			<u>x</u>	<u>x</u>	<u>Cohen Check (\$5,000)</u>			
		<u>9:19 am</u>			<u>Recess</u>			
		<u>9:34 am</u>			<u>Reconvene</u>			
					<u>Plaintiff will not be allowed to have the Del Mar Seafoods owner Joseph Cappuccio present along with Joseph Roggio.</u>			
		<u>9:37 am</u>			<u>Continued Direct</u>			

<u>37</u>			<u>x</u>	<u>x</u>	<u>Schedule of Payments</u>	
<u>30</u>			<u>x</u>	<u>x</u>	<u>Olde Port Fisheries Account</u>	
<u>31</u>			<u>x</u>	<u>x</u>	<u>Del Mar Credit Memo</u>	
<u>33</u>			<u>x</u>	<u>x</u>	<u>F/V Point Loma Account Inquiry</u>	
<u>34</u>			<u>x</u>	<u>x</u>	<u>Cohen Check</u>	
<u>35</u>			<u>x</u>	<u>x</u>	<u>Cohen Check</u>	
<u>36</u>			<u>x</u>	<u>x</u>	<u>Cohen Check</u>	
<u>40</u>			<u>x</u>	<u>x</u>	<u>Cohen Check</u>	
<u>38</u>			<u>x</u>	<u>x</u>	<u>Schedule of Payments</u>	
<u>47</u>			<u>x</u>	<u>x</u>	<u>JV Assignment</u>	
<u>42</u>			<u>x</u>	<u>x</u>	<u>US Marshal Final Invoice</u>	
<u>43</u>			<u>x</u>	<u>x</u>	<u>Nat. Maritime Svcs. Invoice</u>	
<u>44</u>			<u>x</u>	<u>x</u>	<u>Sugar Dock LLC Invoices</u>	
<u>11</u>		<u>subject to parole rule</u>	<u>x</u>	<u>x</u>	<u>Fax from D. Smith to J. Roggio</u>	
<u>12</u>		<u>“</u>	<u>x</u>	<u>x</u>	<u>Del Mar Balance Sheet</u>	
<u>15</u>		<u>“</u>	<u>x</u>	<u>x</u>	<u>Asset Balance Sheet</u>	
<u>16</u>		<u>“</u>	<u>x</u>	<u>x</u>	<u>Asset Balance Sheet</u>	
<u>17</u>		<u>“</u>	<u>x</u>	<u>x</u>	<u>Asset Balance Sheet</u>	
<u>19</u>			<u>x</u>	<u>x</u>	<u>General Ledger</u>	
<u>20</u>			<u>x</u>	<u>x</u>	<u>Accounts Payable Aged Invoice</u>	
<u>21</u>			<u>x</u>	<u>x</u>	<u>Accounts Payable Trial Balance</u>	
<u>29</u>			<u>x</u>	<u>x</u>	<u>Cohen Check</u>	
		<u>11:00 am</u>			<u>Recess</u>	
		<u>11:18 am</u>			<u>Reconvene</u>	
					<u>Cross Examination of Joseph Roggio</u>	
	<u>7</u>		<u>x</u>	<u>x</u>	<u>Promissory Note</u>	
	<u>8</u>		<u>x</u>	<u>x</u>	<u>First Preferred Mortgage</u>	
	<u>11</u>		<u>x</u>	<u>x</u>	<u>Fax from D. Smith to J. Roggio</u>	
	<u>18</u>		<u>x</u>	<u>x</u>	<u>Accounts Payable Trial Balance</u>	
	<u>19</u>		<u>x</u>	<u>x</u>	<u>General Ledger Detail Report</u>	
	<u>24</u>		<u>x</u>	<u>x</u>	<u>Olde Port Fisheries Inventory Records</u>	
	<u>25</u>		<u>x</u>	<u>x</u>	<u>Cohen Check</u>	

<u>29</u>		<u>x</u>	<u>x</u>	<u>Cohen Check</u>
<u>37</u>		<u>x</u>	<u>x</u>	<u>Schedule of Payments</u>
				<u>Deposition referred to</u>
<u>221</u>		<u>x</u>	<u>x</u>	<u>Declaration of Joseph Roggio</u>
<u>38</u>		<u>x</u>	<u>x</u>	<u>Schedule of Payments</u>
	<u>1:00 pm</u>			<u>Recess until 5/22/08</u>
				<u>MAY 22, 2008</u>
	<u>7:30 am</u>			<u>Reconvene</u>
				<u>Court ruled on the late designation, deemed a discovery request. The objections are sustained.</u>
	<u>7:38 am</u>			<u>Continued Cross Examination of Joseph Roggio</u>
<u>38</u>		<u>x</u>	<u>5/20</u>	<u>Schedule of Payments</u>
<u>225</u>		<u>x</u>	<u>x</u>	<u>Balance Sheet</u>
<u>47</u>		<u>x</u>	<u>5/20</u>	<u>JV Assignment</u>
<u>40</u>		<u>x</u>	<u>5/20</u>	<u>Cohen Correspondence to Del Mar</u>
<u>35</u>		<u>x</u>	<u>5/20</u>	<u>Cohen Check</u>
<u>36</u>		<u>x</u>	<u>5.20</u>	<u>Cohen Check</u>
<u>220</u>		<u>x</u>	<u>x</u>	<u>Declaration of Joe Roggio in support of plaintiff's opposition</u>
	<u>8:30 am</u>			<u>Witness Excused</u>
	<u>8:31 am</u>			<u>Plaintiff's witness Michael Cohen by deposition.</u>
	<u>8:38 am</u>			<u>Plaintiff's witness Leonard Cohen by deposition</u>
	<u>8:45 am</u>			<u>Plaintiff's witness Barry Alan Cohen sworn-in</u>
				<u>Deposition read</u>
<u>49</u>		<u>x</u>		<u>Declaration of Barry Cohen in support of motion for atty's fees</u>
	<u>9:10 am</u>			<u>Recess</u>
	<u>9:29 am</u>			<u>Reconvene</u>
				<u>Continued Direct Examination of Barry Cohen</u>
<u>85</u>	<u>withdrawn</u>	<u>x</u>		<u>Declaration of Barry Cohen</u>
<u>86</u>		<u>x</u>	<u>x</u>	<u>Email to B. Cohen from J. Cappuccio</u>
<u>9</u>		<u>x</u>		<u>Cantrell Memo</u>
				<u>Deposition Read</u>

<u>79</u>		<u>x</u>		<u>Declaration of B. Cohen in support of motion to vacate</u>
				<u>Deposition Read</u>
<u>37</u>		<u>x</u>		<u>Cantrell Memorandum</u>
				<u>Deposition Read</u>
<u>84</u>		<u>x</u>	<u>x</u>	<u>2006 Tax Return</u>
<u>51</u>		<u>x</u>	<u>x</u>	<u>Tax Return</u>
				<u>Plaintiff reserves the right to cross examine the witness during direct by defendant</u>
	<u>10:33 am</u>			<u>Witness Excused</u>
	<u>10:34 am</u>			<u>Plaintiff's witness Christene Cohen by deposition</u>
	<u>10:50 am</u>			<u>Plaintiff's witness Joseph Cappuccio sworn-in</u>
<u>49</u>		<u>x</u>	<u>x</u>	<u>Cohen Declaration</u>
<u>46</u>		<u>x</u>		<u>Cappuccio Assignment</u>
	<u>11:10 am</u>			<u>Recess</u>
	<u>11:27 am</u>			<u>Reconvene</u>
				<u>Cross Examination</u>
<u>228</u>		<u>x</u>		<u>Deposition of Joe Cappuccio</u>
<u>47</u>		<u>x</u>	<u>5/20</u>	<u>JV Assignment</u>
<u>46</u>		<u>x</u>		<u>Cappucccio Assignment</u>
<u>221</u>		<u>x</u>	<u>x</u>	<u>Declaration of J. Cappuccio in support of opposition to motion to vacate arrest</u>
	<u>12:04 pm</u>			<u>Plaintiff moved in exhibits #9, 46, 79</u>
<u>9</u>		<u>x</u>	<u>x</u>	<u>Cantrell Memo</u>
<u>46</u>		<u>x</u>	<u>x</u>	<u>Cappuccio Assignment</u>
<u>79</u>		<u>x</u>	<u>x</u>	<u>Declaration of B. Cohen in support of motion to vacate arrest</u>
	<u>12:05 pm</u>			<u>Witness Excused</u>
				<u>Parties addressed an issue over witness Capt David Kobak appearing for the live testimony or reading his deposition. Witness is present and will be called in defendants case.</u>
	<u>12:12 pm</u>			<u><i>Plaintiff's REST</i></u>
				<u>Defendants' witness Capt. David Kobak sworn-in</u>
<u>204</u>		<u>x</u>	<u>x</u>	<u>Receipts for Income & Expenses Pre Arrest</u>
<u>209</u>		<u>x</u>	<u>x</u>	<u>Receipts for Income & Expenses After Arrest</u>
<u>205</u>		<u>x</u>		<u>Email</u>

	<u>12:39 pm</u>			<u>Cross Examination</u>
				<u>Deposition Read</u>
	<u>12:49 pm</u>			<u>Redirect Examination</u>
	<u>12:50 pm</u>			<u>Recross Examination</u>
	<u>12:51 pm</u>			<u>Witness Excused</u>
				<u>Parties responded to the Courts questions regarding 1) Avala Beach case; and 2) who made the advances to the sons</u>
	<u>1:07 pm</u>			<u>Recess until 5/23/08</u>
				<u>MAY 23, 2008</u>
	<u>7:30 am</u>			<u>Reconvene</u>
				<u>Defendants' witness Christene Cohen by deposition</u>
	<u>7:36 am</u>			<u>Defendants' witness Barry Cohen called. Previously sworn-in</u>
<u>4</u>		<u>x</u>	<u>x</u>	<u>US Groundfish Permit</u>
<u>3</u>		<u>x</u>	<u>x</u>	<u>F/V Point Loma USCG Certificate</u>
<u>5</u>		<u>x</u>	<u>x</u>	<u>F/V Point Loma Abstract of Title</u>
<u>41</u>		<u>x</u>		<u>Insurance Policies Covering the F/V Point Loma</u>
<u>25</u>		<u>x</u>	<u>5/20</u>	<u>Cohen Check</u>
<u>29</u>		<u>x</u>	<u>5/20</u>	<u>Cohen Check</u>
<u>34</u>		<u>x</u>	<u>5/20</u>	<u>Cohen Check</u>
<u>35</u>		<u>x</u>	<u>5/20</u>	<u>Cohen Check</u>
<u>36</u>		<u>x</u>	<u>5/20</u>	<u>Cohen Check</u>
<u>37</u>		<u>x</u>	<u>5/20</u>	<u>Schedule of Payments</u>
<u>38</u>		<u>x</u>	<u>5/20</u>	<u>Schedule of Payments</u>
<u>39</u>		<u>x</u>		<u>Schedule of Payments</u>
<u>40</u>		<u>x</u>	<u>5/20</u>	<u>Cohen Correspondence to Del Mar</u>
<u>38</u>		<u>x</u>	<u>5/20</u>	<u>Schedule of Payments</u>
<u>34</u>		<u>x</u>	<u>5/20</u>	<u>Cohen Check</u>
<u>46</u>		<u>x</u>	<u>5/22</u>	<u>Cappuccio Assignment</u>
	<u>9:08 am</u>			<u>Recess</u>
	<u>9:25 am</u>			<u>Reconvene</u>
				<u>Continued Direct of Barry Cohen</u>

<u>226</u>		<u>x</u>		<u>F/V Point Loma Income for 14 Fishing Trips</u>
<u>46</u>		<u>x</u>	<u>5/22</u>	<u>Cappuccio Assignment</u>
<u>47</u>		<u>x</u>	<u>5/20</u>	<u>JV Assignment</u>
<u>203</u>		<u>x</u>	<u>x</u>	<u>Settlement Sheets</u>
<u>204</u>		<u>x</u>	<u>5/22</u>	<u>Receipts for Income & Expenses Pre Arrest</u>
<u>206</u>		<u>x</u>	<u>x</u>	<u>Calculation of Net Income by Trip, Pre and Post Arrest</u>
<u>209</u>		<u>x</u>	<u>5/22</u>	<u>Receipts for Income & Expenses Post Arrest</u>
<u>210</u>		<u>x</u>		<u>Travel Expenses to SF</u>
<u>212</u>		<u>x</u>		<u>Travel Expenses to SF</u>
<u>224</u>		<u>x</u>		<u>Travel Expense Claim Form</u>
	<u>9:55 am</u>			<u>Plaintiff's Motion in Limine to Exclude Evidence re Cost Incurred for Court Proceedings is sustained</u>
	<u>9:58 am</u>			<u>Continued Direct</u>
<u>211</u>		<u>x</u>	<u>x</u>	<u>Payments to Captain and Crew</u>
	<u>10:02 am</u>			<u>Cross Examination</u>
<u>87</u>		<u>x</u>	<u>x</u>	<u>Responses to 1st Set of Admissions (#5,6,4,27,26,19,28,33)</u>
<u>80</u>		<u>x</u>	<u>x</u>	<u>Declaration of B. Cohen</u>
<u>52</u>		<u>x</u>	<u>x</u>	<u>F/V Point Loma Monthly Trip Revenue</u>
<u>53</u>		<u>x</u>	<u>x</u>	<u>F/V Point Loma Trip Breakdown</u>
<u>54</u>		<u>x</u>	<u>x</u>	<u>Del Mar Income Statement Summary 1999-2004</u>
<u>226</u>		<u>x</u>		<u>F/V Point Loma Income for 14 Fishing Trips</u>
	<u>11:03 am</u>			<u>Witness Excused</u>
				<u>No Rebuttal Case</u>
				<u>Court would like exhibits #1 and 2 to moved in the record for the Court of Appeals. No objections.</u>
<u>1</u>		<u>x</u>	<u>x</u>	<u>Color Photograph of the F/V Point Loma</u>
<u>2</u>		<u>x</u>	<u>x</u>	<u>Color Photograph of the F/V Point Loma</u>
				<u>Court addressed the deadlines for filing the proposed findings of fact.</u>
	<u>11:15 am</u>			<u>Adjourned</u>